vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1211 OF 2002

Chandrakant Ganpat Sonawane ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mrs.P.P. Kakade for Appellant
Mr.P.S. Hingorani, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 17, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused has impugned the judgment of the Additional Sessions Judge, Niphad convicting him under section 302 of the Indian Penal Code. According to the prosecution, the accused who was the husband of the deceased set her on fire as she was unable to fulfil his desire to have a particular vegetable for dinner. The victim has left behind two dying declarations which have been recorded. The victim has alleged that the accused doused her with kerosene and then set her on fire. In such circumstances, the accused was arrested and was tried for having murdered his wife on 27.1.2001 at 8 pm. Although the accused was arrested and charged under section 307 of the Indian Penal Code initially, the charge was altered to section 302 of the Indian Penal Code when the victim succumbed to the injuries on 2.2.2001.

2. The prosecution has examined 5 witnesses in support of its case. The first witness that the prosecution has examined is the medical officer attached to the Rural Hospital, Yeola. This witness has spoken about the victim having been admitted to the hospital for treatment of the burn injuries sustained by her. He also stated that the Executive Magistrate had recorded the statement of the victim after being assured that her condition was stable enough for her statement to be recorded. The witness has stated that he has endorsed the dying declarations recorded by the Executive Magistrate.

3. The next witness who has been examined is the Executive Magistrate who has recorded the dying declaration which is at Exhibit 8. This witness has spoken about the precaution that he took prior to the recording of the statement. He has stated that he ascertained that the victim was conscious and was fit to make her statement which could be recorded. He has thus, proved Exhibit 8.

4. The prosecution has then examined the Doctor who performed the postmortem on the body of the victim on 2.2.2000. He has opined that she had suffered from 72% burn injuries. He has proved the postmortem notes

prepared by him. The prosecution has then examined the police officer who undertook the investigations. He has deposed that while arresting the accused, he found that the accused had sustained some burn injuries.

5. PW5 is another police officer who was attached to Yeola Taluka Police station. This witness has recorded the dying declaration which is at Exhibit 9. He has taken the precaution of obtaining the endorsement from the medical officer. The statement has been recorded after the medical officer opined about the condition of the deceased.

6. Thus, we have two dying declarations at Exhibits 8 and 9 which have been duly proved by PW2 and PW5 respectively. Both these declarations are consistent. However, in the second statement, the deceased has stated that the accused first threw kerosene on her and set her on fire. The accused then poured water on her in order to extinguish the fire. She has stated that the landlord of the place and others residing near her admitted her to hospital. The dying declarations give the reason for the accused setting the deceased on fire. The reason is the same in both the statements. In such circumstances, it is proved that the deceased died a homicidal death and that the accused was responsible for her death.

7. We find from the evidence on record that the accused who was addicted to liquor was in an inebriated state even on that day i.e., on 27.1.2001 when he set the victim on fire. It is obvious that he realised the gravity of his conduct immediately and tried to extinguish the fire. This is disclosed from the statement at Exhibit 9 as well as the fact that the accused had suffered burn injuries which the Investigating Officer, PW4 has mentioned he saw when he arrested the accused. The learned Advocate submits that in such circumstances the offence which has been committed by the accused would fall within the exceptions to section 300 being culpable homicide not amounting to murder. She relies on *State of M.P. v/s. Kalu Ram,* **(2004) 12 SCC 543**.

8. We accept the submission of the learned advocate in the aforesaid facts and circumstances of this case. The appeal is, therefore, partly allowed. The conviction and sentence under section 302 of the Indian Penal Code is set aside. The accused is instead convicted for the offence punishable under section 304 Part II of IPC and sentenced to suffer imprisonment for the period already undergone.

9. Appeal accordingly disposed off.